

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Chief Bankruptcy Judge

Modesto, California

August 19, 2021 at 2:00 p.m.

1. [20-90479](#)-E-12

JOE MACHADO

**CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION**

7-9-20 [1]

Debtor's Atty: David C. Johnston

Notes:

Continued from 6/3/21

The Status Conference is continued to 2:00 p.m. on xxxxxxx

AUGUST 19, 2021 STATUS CONFERENCE

Counsel for Chapter 12 Debtor and former Debtor in Possession Joe Machado filed a Post-Confirmation Status Report on August 14, 2021. Dckt. 125. The Debtor reports that no appeal was taken from the court's May 21, 2021 order confirming the Chapter 12 Plan in this case.

The sale of the estate's ranch property closed on or about June 4, 2021, with all secured claims, expenses of sale, and approved administrative expenses paid from the proceeds, with there being \$62,754.70 of net sales proceeds remaining. Of this, \$20,000.00 is being held in trust pursuant to order of the court for payment of the Debtor in Possession's counsel's fees and expenses when approved, and \$42,754.79 was paid to the Debtor pursuant to the homestead exemption claimed in the property sold.

It is further reported that the Debtor, as Chapter 12 Plan Administrator, is proceeding with the sale of non-exempt farm equipment, with the sales to date generating \$18,000 in proceeds, with those monies paid to the Chapter 12 Trustee.

The Debtor is preparing to file the necessary federal and state tax returns to report the sales of property. For those 2021 taxes, the plan provides for them to be treated as pre-petition general unsecured claims, resulting in there not being a distribution until mid-2022 after the tax obligations are determined in their final amounts.

August 19, 2021 at 2:00 p.m.

The Debtor Plan Administrator recommends that the Post-Confirmation Status Conference be continued out until mid-2022.

At the Status Conference, **XXXXXXX**

FINAL RULINGS

2. [20-90107-E-7](#) PAUL DASILVA
[20-9004](#)
WRIGHT ET AL V. DASILVA

CONTINUED STATUS CONFERENCE RE:
AMENDED COMPLAINT
5-26-20 [[11](#)]

ADVERSARY PROCEEDING
DISMISSED: 8/2/2021

Plaintiffs' Atty: Donna T. Parkinson; Steve M. Defilippis
Defendant's Atty: Jessica A. Dorn

Adv. Filed: 4/28/20
Answer: 6/24/20
Amd. Cmplt. Filed: 5/26/20
Answer: 6/24/20

Nature of Action:
Dischargeability - other

Notes:
Continued from 4/29/21. Counsel for Defendant-Debtor having filed a Supplemental Interim Status Report [Dckt 43] advising the court that the dispute has been settled and requesting a continuance of the Status Conference.

[PP-3] Stipulation for Dismissal filed 8/2/21 [Dckt 49]; Order granting filed 8/2/21 [Dckt 51]

<p>The Adversary Proceeding having been dismissed (Order, Dckt. 51), the Status Conference is concluded and removed from the Calendar.</p>

Final Ruling: No appearance at the August 19, 2021 Status Conference is required.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 12 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 18, 2021. By the court's calculation, 42 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(8) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1) (requiring fourteen days' notice for opposition).

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Status Conference on the Motion to Confirm the Plan is continued to 2:00 p.m. on September 30, 2021.

Continuance of August 19, 2021 Status Conference

The Parties being actively participating in dispute resolution mediation and no action may be taken on the present Motion until other fundamental issues, including whether Debtor may be a debtor in a Chapter 12 case, the court continues the Status Conference by final ruling to save the parties time and expense, allowing them to focus on the mediation issues.

REVIEW OF MOTION

Leslie F. Jensen, the Chapter 12 Debtor in this case has set for hearing confirmation of its Chapter 12 Plan (Dckt. 70).

The Plan calls for payments of \$4,000 per month for a period of 60 months to Michael H. Meyer, Chapter 12 Trustee (the "Trustee"), who will pay expenses of administration in full, nominal priority claims in full, a small partially secured claim of a judgment lien creditor, and 18 cents on the dollar on general unsecured claims totaling \$1,108,234, which are not secured by any assets and not covered by insurance.

Moreover, the Plan calls for all other claims which are secured by the Debtor's assets or the assets of L & L Investments, LLC, a California limited liability company ("L & L") to be unimpaired by the Plan and paid directly by the Debtor or by L & L. According to the Plan, the claim held by Iraj Sabahi, to the extent valid and to the extent of insurance coverage, will be paid by the Debtor's errors and omissions policy and not by the Trustee.

April 29, 2021 Hearing

At the hearing the Parties addressed with the court the need to address two issues prior to proceeding with the cost and expense of confirmation discovery and litigation – determine whether Debtor qualifies for relief under Chapter 12 and the pending Motion to Dismiss or Convert this case filed by Krista Osmers and The Dyer Law Firm. Motion, Dckt. 96

The court continues this hearing to allow the parties to focus on the other two matters, with the court issuing an Order to Show Cause re Eligibility of Debtor to Obtain Relief under Chapter 12 of the Bankruptcy Code.

Trustee's Opposition

Trustee filed an Opposition on April 14, 2021. Dckt. 77. Trustee opposes the confirmation on the following basis:

- A. The court should first determine whether Debtor is eligible for relief as a "family farmer" as defined in 11 U.S.C. § 101(18)(a).
- B. Debtor's plan fails to provide all projected disposable income over the applicable commitment period.
- C. The Plan may have been proposed in bad faith.
- D. The Plan fails the Liquidation test.

Creditors' Objections

On April 15, 2021 Creditors Krista Osmers and her counsel The Dyer Law Firm filed an Objection to confirmation on the basis that:

- A. Debtor is not eligible for chapter 12 relief.
- B. The Plan is not proposed in good faith where Debtor has misrepresented and omitted facts about assets and finances.
- C. Debtor is not committing all of her projected disposable income to the plan.
- D. The Plan is not feasible.

Creditor Iraj Sabahi filed an Objection to the confirmation adopting the same arguments as creditor Krista Osmers and the Trustee. Dckt. 85. Additionally, Creditor Sabahi requests the court permit

creditors to conduct discovery on the issues raised in the Objections, such as the value of Debtor's L&L interest, the value of Debtor's

DISCUSSION

A court may proceed with the confirmation of a Chapter 12 Plan pursuant to 11 U.S.C. § 1225 provided that:

- A. The Plan complies with the provisions of Chapter 12 of the Bankruptcy Code and with the other applicable provisions of this title;
- B. Any fee, charge, or amount required under chapter 123 of title 28 [28 U.S.C. §§ 1911 et seq.], or by the plan, to be paid before confirmation, has been paid;
- C. The Plan has been proposed in good faith and not by any means forbidden by law;
- D. The value, as of the effective date of the Plan, of property to be distributed under the Plan on account of each allowed unsecured claim is not less than the amount that would be paid on such claim if the estate of Debtor were liquidated under Chapter 7 of the Bankruptcy Code on such date;
- E. With respect to each allowed secured claim provided for by the Plan—
 - 1. The holder of such claim has accepted the Plan;
 - 2. The
 - a. Plan provides that the holder of such claim retain the lien securing such claim; and
 - b. The value, as of the effective date of the Plan, of property to be distributed by the Trustee or Debtor under the Plan on account of such claim is not less than the allowed amount of such claim; or
 - 3. Debtor surrenders the property securing such claim to such holder;
- F. Debtor will be able to make all payments under the Plan and will be able to comply with the Plan; and
- G. Debtor has paid all amounts that are required to be paid under a domestic support obligation and that first become payable after the date of the filing of the petition if Debtor is required by a judicial or administrative order, or by statute, to pay such domestic support obligation.

11 U.S.C. § 1225(a).

If the trustee or the holder of an allowed unsecured claim objects to confirmation of the Plan, then the court may not approve the Plan unless, as of the effective date of the Plan—

(A) the value of the property to be distributed under the Plan on account of such claim is not less than the amount of such claim;

(B) the Plan provides that all of Debtor's projected disposable income to be received in the three-year period, or such longer period as the court may approve under section 1222(c), beginning on the date that the first payment is due under the Plan will be applied to make payments under the Plan; or

(C) the value of the property to be distributed under the Plan in the three-year period, or such longer period as the court may approve under section 1222(c), beginning on the date that the first distribution is due under the Plan is not less than Debtor's projected disposable income for such period.

(2) For purposes of this subsection, "disposable income" means income that is received by Debtor and that is not reasonably necessary to be expended—

(A) for the maintenance or support of Debtor or a dependent of Debtor or for a domestic support obligation that first becomes payable after the date of the filing of the petition; or

(B) for the payment of expenditures necessary for the continuation, preservation, and operation of Debtor's business.

11 U.S.C. § 1225(b)(1).

Trustee has presented an Opposition. Moreover, two creditors holding judgment-based claims have also opposed confirmation of the case. Both Trustee and Creditor Krista Osmer points the court first to whether Debtor is eligible as a "family farmer" for reorganization under Chapter 12, where Trustee notes that a Status Conference had been set in order to present evidence as to this issue and Creditor Osmer arguing that Debtor is not a family farmer.

This is indeed the threshold question. A Status Conference was held on January 28, 2021, where the court discussed with Trustee, Debtor and various creditors this issue.

According to Debtor, the LLC is the owner of the almond orchard, the farming operation. Debtor owns 50% of the membership interests (subject to restrictions in the operating agreement) and manages the LLC. Debtor asserts that Debtor qualifies as a family farmer entitled to relief under Chapter 12 because the majority of her debt, excluding her residence, is from farming, and because more than 50% of her gross revenue in 2019, the year preceding the filing of this bankruptcy case, was from farming. Moreover, Debtor asserts that 100 percent of the gross revenue of the LLC has been allocated to Debtor for many years and she has fully managed and is accountable for every cent of the gross revenue.

Here, however, Debtor's income is based on her law practice. As previously discussed, Debtor's Schedule I stated that she is a self employed attorney with a monthly income of \$5,500 in wages, salary, or commission. At the Status Conference, as it pertained to Debtor's income, Debtor's counsel "admitted that the \$5,500 a month does not represent her actual income from her law practice, but a net amount of income after deducting all of the losses assigned to her by the Limited Liability Company in which she is a fifty percent (50%) owner with Debtor's sister." *Civil Minutes*, Dckt. 54, at 6.

Debtor does not list any income or cash flow coming from the LLC. Debtor does not provide any financial information concerning the farming operation, whether the current operation is cash flow positive, and whether there is any farming operation for a Chapter 12 reorganization.

In the Motion for confirming the proposed Plan, while explaining that the plan is feasible based on her law practice income, Debtor glosses over the LLC and simply states "Debtor has such large operating losses which are carried forward from L&L that she does not expect to have any federal or state income tax liability fort the life of the Plan." Though there are operating losses that allows the member of an LLC to keep all the positive cash flow tax free, that does not mean that there is not a positive cash flow which is income, for bankruptcy purposes, to fund the plan.

As was also previously discussed at the January 2021 Status Conference, the court stated the following:

In response to Question 46 Debtor states that she has no interest in "any farm- or commercial fishing-related property?" *Id.* at 9.

Going back to Schedule I, Debtor states under penalty of perjury having no other income from any source, with the \$5,500 in "gross wages, salary, and commissions" from her "Employer" Law Office of Leslie F. Jensen, being her only income. *Id.* at 27. Debtor has no income other than from her "employment" as a lawyer. Though stated as "gross wages, salary, and commissions," Schedule I states that there are no deduction from such "wages" for federal and state taxes, or Social Security tax.

On Form B6I attached to Schedule I, Debtor state that she is an "almond grower" who has been employed for seven years by L & L Investments, LLC. *Id.* at 29. No income from such employment by L & L Investments, LLC is shown on Schedule I.

On Schedule J, Debtor lists (\$10,479) in expenses, which include mortgage, taxes, and maintenance in Alabama, but no provision for payment of income taxes, Social Security taxes, or self-employment taxes (if Debtor is self-employed and not an employee of the "Law Offices of Leslie F. Jensen." *Id.* at 30-31.

The above information is not changed on the Amended Schedule A/B filed on November 30, 2020, by Debtor, one day after the original Schedule A/B was filed by Debtor. Dckt. 22.

Id., at 4. To this day Debtor has not filed Supplemental or Amended Schedules addressing the court's comments.

Collier on Bankruptcy provides insight in determining whether Debtor is a “family farmer” and thus eligible for Chapter 12 relief:

The definition of family farmer is divided into two parts. The first applies to individuals, and the second applies to corporations and partnerships. Each sets up a different, though related, test for determining whether individuals, corporations and partnerships qualify as family farmers.

Both have an aggregate indebtedness limitation of \$10,000,000, and require the debtor to be engaged in a farming operation at the time that the case is commenced. **If the case involves an individual, the farming operation must be owned and operated by such individual or by such individual and such individual’s spouse.** If the case involves a corporation or partnership, the entity must be engaged in a farming operation and the farming operation must be conducted by a family that owns, either alone or in conjunction with relatives, more than 50 percent of the stock of the entity. **For both individuals and entities, there is a further requirement that not less than 50 percent of the debtor’s noncontingent, liquidated debts at the commencement of the case, other than debts for a dwelling used as a principal residence, must arise out of the debtor’s farming operation.**

An individual debtor must fulfill one additional test. The individual debtor must have received from his or her farming operation at least 50 percent of such individual’s gross income during the taxable year preceding the year in which the petition was filed or during each of the second and third taxable years preceding the year in which the petition was filed.

2 Collier on Bankruptcy P 101.18 (16th 2021) (Emphasis added.).

As explained in Collier,

To satisfy the farm income test, **an individual must have received at least 50 percent of such individual’s gross income from the individual’s farming operation** during the taxable year immediately preceding the taxable year in which the petition was filed or during each of the second and third years preceding the taxable year in which the petition was filed.

2 Collier on Bankruptcy P 101.18 (16th 2021) (Emphasis added.).

Finally, relevant to the case at hand,

Determining whether the farm income test has been fulfilled requires the court to first determine the amount of the debtor’s gross income during the relevant tax year and then to determine the portion of that income attributable to the debtor’s farming operation.

2 Collier on Bankruptcy P 101.18 (16th 2021).

In defining “gross income,” the court cites to *In re Sandifer*, where as the bankruptcy court held that:

For purposes of determining whether Chapter 12 debtors met 50 percent of gross income requirement in 11 USCS § 101(18), court looked to definition of gross income in 26 USCS § 61 and determined that gross income reported by their limited liability company (LLC), which was formed by debtor husband and his son for their farming operation, should pass through to members and be considered income of those members; as result of attributing farm income reported by LLC to debtors, they earned at least half of their gross income from farming operation and met definition of “family farmer” in § 101(18) for purposes of their eligibility under 11 USCS § 109(f). *In re Sandifer*, 448 B.R. 382, 2011 Bankr. LEXIS 1410 (Bankr. D.S.C. 2011).

11 USCS § 101 (120. —Gross Income.)

In this case, the court the turns to Debtor’s Statement of Financial Affairs, Docket 21, which provides the following information:

For last calendar year: (January 1 to December 31, 2019)	Operating farm - gross	\$486,671.00
	Operating law firm - gross	\$451,023.00
For last calendar year: (January 1 to December 31, 2018)	Operating farm - gross	\$542,226.00
	Operating law firm - gross	\$396,058.00

Statement of Financial Affairs, at 34. (No income has yet been provided by the year 2020.) Thus, it seems Debtor meets the income criteria where the farming operation’s gross income, which she has testified is 100% attributable to her, is higher than the gross income for her law practice.

Debtor however has not provided the net income of the farming operation. The only net income provided is that for the law practice as stated in Debtor’s Schedule I and discussed above. In her Declaration in support if confirmation, Debtor testifies:

The only net income I have is from my law practice[.]

Declaration, Dckt. 71, ¶ 9.

This statement may be taken to have two meanings: (a) either the farming operation does not generate cash flow and Debtor is covering the farm’s losses with her law practice income or (b) by “net income” Debtor means taxable income. Debtor’s counsel has previously referred to “operating losses” as it pertains to the farming operation and notwithstanding these losses, it is possible that there is net income coming from the farming operation and if so additional income that could fund the plan. As already noted, Debtor has not filed neither Amended nor Supplemental Schedules providing for farming income. Debtor

has failed to provide financial information as it pertains to the farming operation which would be relevant as to the feasibility of the Chapter 12 Plan.

Turning to Creditor's objection related to Debtor's expenses. The court had previously noted an expenses issue at the January 28, 2021 Status Conference:

On Schedule J, Debtor lists (\$10,479) in expenses, which include mortgage, taxes, and maintenance in Alabama, but no provision for payment of income taxes, Social Security taxes, or self-employment taxes (if Debtor is self-employed and not a true employee of the "Law Offices of Leslie F. Jensen," which employer pays such taxes. *Id.* at 30-31.

Civil Minutes, Dckt. 54, at 4. As noted by Creditor, in reviewing Debtor's Schedules I and J, Debtor's income of \$5,500.00 minus expenses in the amount of \$10,479.00, there is a shortage of (\$4,979.00). In her Declaration in support of confirmation, Debtor states that as she is 65 years old and, if necessary, she will apply for Social Security benefits and would receive approximately \$2,500. Declaration, Dckt. 71, at ¶ 20. This additional income would still not be sufficient to cover her scheduled expenses.

Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Debtor in Possession's Status Report

On August 14, 2021, Debtor in Possession filed a Status Report suggesting that the court to continue the Scheduling Conference to September 30, 2021 at 2:00 p.m. on the basis that (1) the parties now having submitted their case to the Bankruptcy Dispute Resolution program and their mediation session has been scheduled to August 31, 2021 and (2) the Court has already continued hearings on the matters identified as docket control numbers HLG-1, RHS-2, and DCJ-4 to September 30, 2021 at 2:00 p.m. pursuant to a joint request of the parties.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 12 Plan filed by Leslie F. Jensen ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the hearing on the Motion to Confirm is continued to **2:00 p.m. on September 30, 2021.**

MCGRANAHAN V. ENGLE ET AL

Final Ruling: No appearance at the August 19, 2021 Status Conference is required.

Plaintiff's Atty: Steven S. Altman

Defendant's Atty:

Gurjeet S. Rai [Philip Scott Engle; Dallia Desamito Engle]

Unknown [State of California-Franchise Tax Board]

Isaac M. Hoenig [United States of America-Internal Revenue Service]

Adv. Filed: 6/22/21

Answer: 7/20/21 [Philip Scott Engle; Dallia Desamito Engle]

Amd. Answer: 8/12/21 [Philip Scott Engle; Dallia Desamito Engle]

Nature of Action:

Validity, priority or extent of lien or other interest in property

Declaratory judgment

Notes:

Stipulation Extending Time to Respond to Complaint [United States of America-Internal Revenue Service] filed 7/27/21 [Dckt 10]; time extended to 8/26/21

Plaintiff's Status Conference Statement filed 8/9/21 [Dckt 11]

Amended Answer to Complaint [by Philip Scott Engle and Dallia Desamito Engle] filed 8/12/21 [Dckt 13]

The Status Conference is continued to 2:00 p.m. on September 30, 2021.

AUGUST 19, 2021 STATUS CONFERENCE

On August 9, 2021, the Plaintiff-Trustee filed a Status Conference Statement. Dckt. 11. Plaintiff-Trustee advises the court that counsel for Defendant-Debtor advises Plaintiff-Trustee that the answer filed does not comply with the requirements set forth in Federal Rule of Civil Procedure 8 and Federal Rule of Bankruptcy Procedure 7008, it not admitting or denying the allegations in the Complaint. Defendant-Debtor's Amended Answer was filed on August 12, 2021. Dckt. 13.

The Internal Revenue Service and the California Franchise Tax Board have not filed their answers, after having been granted extensions of time by Plaintiff-Trustee. The extension for the Internal Revenue Service is to August 26, 2021. Stipulation pursuant to L.B.R. 7012-1, Dckt. 10.

August 19, 2021 at 2:00 p.m.

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Plaintiff-Trustee advises the court that in light of not all named defendants having filed answers, it is too early for the court to set deadlines and other pre-trial dates at this time. The court concurs.

SUMMARY OF COMPLAINT

The Complaint filed by Michael D. McGranahan, the “Plaintiff-Trustee”, Dekt. 1 , asserts claims to determine the extent, validity, and priority of a lien, and for payment of administrative expenses. The Complaint alleges that in Defendant-Debtor Phillip and Dallia Engle’s Chapter 7 bankruptcy case the court authorized the Plaintiff-Trustee to sell real property free and clear of liens and encumbrances, with such liens and encumbrances attaching to the proceeds of sale. The Plaintiff-Trustee is currently holding \$327,404.47 in proceeds from that sale.

In the First Claim for Relief, the Plaintiff-Trustee seeks to avoid and preserve for the Bankruptcy Estate a lien of the Defendant Internal Revenue Service for a penalty of \$37,383.24, plus interest, that encumbers the proceeds of the sale. It is further asserted that the avoided and preserved lien is senior in priority to any claim of exemption in the Property by Defendant-Debtor.

In the Second Claim for Relief, the Plaintiff-Trustee seeks the same form of relief against the Defendant California Franchise Tax Board and Defendant-Debtor for a \$6,636.11, plus interest, tax penalty for which a lien is asserted to encumber the sales proceeds.

In the Third Claim for Relief, Plaintiff-Trustee requests a “declaration” that Plaintiff-Trustee and his counsel are entitled to slightly less than \$50,000 in fees and costs for the “preservation and disposition” of the Property. It is asserted that all of the Defendants dispute Plaintiff-Trustee and his counsel’s right to be paid from the sale proceeds. For this Third Claim, the statutory grounds are stated to be 11 U.S.C. §§ 506, 724, 736.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Initial Status Conference for this Adversary Proceeding having been set by the court, the Parties having agreed to an extension of time for some Defendants to file their answers, those answers not having yet been filed, it being premature for the court to set pre-trial and discovery dates and deadlines, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Status Conference is continued to 2:00 p.m. on September 30, 2021. All parties shall file their Status Conference Statements (or update if appropriate) prior to the continued Status Conference and comply with the meet and confer requirements as set forth in this court’s order setting the Initial Status Conference and deadlines.